there was no longer any impediment to carriers' establishing rates and terms of service through contract, provided that such rates and terms were made available to all shippers ready, willing, and able to meet the terms and pay the rates -- the fundamental obligation of every common carrier. Id., 738 F.2d at 1318; accord, Iowa Power & Light Co. v. Burlington Northern, Inc., 647 F.2d 796, 807-808 & n.18 (8th Cir. 1981), cert. denied, 455 U.S. 907 (1982).

The Court elaborated:

> [C]urrent law no longer considers contract rates to be per se violations of the common carrier duty of nondiscrimination. To be sure, there was a time when one might have drawn the opposite conclusion, and the case law cited by petitioners is illustrative of that earlier period [specifically citing Armour]. . . . Since 1978, however, the Interstate Commerce Commission has held that contract rates are not inherently discriminatory, provided that the carrier offering them makes them available to all similarly situated shippers of like commodities. . . .
>
> The uncertain legal status of private contracts prior to 1978 stemmed largely from the ambiguity of the Supreme Court's holding in Armour Packing. There the Court reviewed the criminal convictions under the Elkins Act which prohibits common carriage of property at less than the applicable published rate on file with the Interstate Commerce Commission. . . .
>
> In light of . . . intervening developments, we find the inference unjustified that the Supreme Court in Armour Packing intended to condemn contact rates as inherently discriminatory. The more likely explanation for the Court's observation that private contracts could not be filed, 209 U.S. at 81, 28 S. Ct. at 435, was the absence of any procedural mechanism for doing so in 1908. Other decisions considering this aspect of the Armour opinion have reached the same conclusion. See, e.g., United Gas Pipeline v. Mobile Gas Service Corp., 350 U.S. 332, 345, 76 S. Ct. 373, 381, 100 L. Ed. 373 (1956); American Broadcasting Cos. v. FCC, 643 F.2d 818, 822-26 (D.C. Cir. 1980). To the extent that such procedural concerns underlay the Court's observation, the Interstate Commerce Commission laid them to rest in its 1978 Change of Policy by specifically providing for the filing of contract rates under normal Commission procedures. . . . Contract rates duly filed with and approved by the Commission, of course, satisfy the central concern of the Armour Court that prices charged for transportation accord with

> applicable rates on file with the ICC. . . . Because the rate applicable to a contract shipper is the rate specified in its contract on file at the Commission, and not that set forth in the carrier's general noncontract tariffs, . . . Armour Packing properly read provides no support for the proposition that contract rates approved under appropriate Commission procedures inherently conflict with a common carrier's duty of nondiscrimination.

Sea-Land, 738 F.2d at 1316-18 (footnotes and most citations omitted).

Applying this logic to the facts at hand, there is no reasonable basis not to apply the Sierra-Mobile doctrine to the AT&T/TFG contractual relationship, and to conclude, after investigation, that AT&T has unlawfully attempted to alter material terms of that relationship through a tariff filing, in contravention of the doctrine and the public interest.

III.

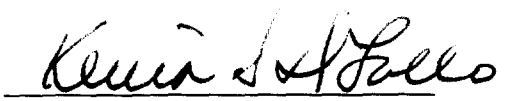
CONCLUSION

Because AT&T's proposed tariff revisions would materially change the terms and conditions of its individually negotiated arrangement with TFG without TFG's consent, and alter the expectations on which TFG relied in entering into the arrangement, application of the substantial cause test is not only appropriate, it is required. Even if AT&T is able to demonstrate substantial cause for the revisions, TFG should be granted

relief from compliance with the revised terms. Application of the Sierra-Mobile doctrine to these facts is appropriate and compels the same conclusions.

Respectfully submitted,

TELECOMMUNICATIONS RESELLERS ASSOCIATION

By: 

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CERTIFICATE OF SERVICE

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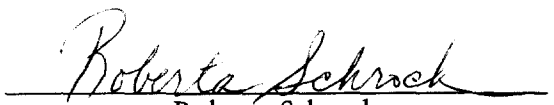

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